

MISCELLANEOUS OPINIONS.

December 16, 1911.

CAPT. J. J. LAUGHINGHOUSE, *Supt. State's Prison, Raleigh, N. C.*

DEAR SIR:—Your favor of the 13th duly received and noted. The facts seem to be that a certain prisoner, who was sentenced to the penitentiary for a term of five years, escaped and was afterwards recaptured. Since then he has rendered very valuable service to the State, and has done all he could to make himself a model prisoner. For such reason the Governor has seen proper to commute his sentence to such an amount as he would have received by virtue of section 5402 of The Revisal had he not escaped from the penitentiary.

The prison authorities want to know if they have the authority, under above section, to give him such amount of money as he would have received by virtue of said section if he had not escaped.

It will be noticed that the last sentence of section 5402 provides that any one who makes "an attempt to escape shall not be entitled to the benefits of this section." The law being so written, I do not think authorities would be justified to give the prisoner any amount of money whatever. It seems to be a meritorious case, and no doubt the Legislature would be glad to rescind the law in this case, but it has not seen proper to vest any discretion in the Prison Board and for that reason I do not think it would be in accordance with the law for the prisoner to receive any money whatever for his good behavior.

Very truly yours,

G. L. JONES,

Assistant Attorney-General.

April 29, 1912.

DR. E. McK. GOODWIN, *Superintendent, Morganton, N. C.*

DEAR SIR:—I have investigated the matter mentioned in your esteemed favor of April 17th, and beg to advise:

The waters falling on a watershed are surface waters. "After waters which, in their first instance, were surface waters have reached and become a part of a water course or permanent lake or pond they lose their character as surface waters, and the rights of persons in their use and their diversion are governed by the rule relating to water courses or lakes and ponds."

Water and Water Courses, 30 Am. and Eng., page 324.

"Surface water, so long as it remains upon one's land, is regarded as his absolute property, and he may collect it in natural or artificial basins, and may use it exclusively as his own; and this is true though by the interception or diversion of such water it fails to reach a water course or permanent lake or pond or to flow over the land of another."

30 A. and E., page 326.

In *Gibbs v. Williams*, 25 Kan., 210; 37 Am. Reps., 241, it was held that where surface water, supplied by falling rains and melting snows from a hilly region or high bluffs, by the natural formation of the ground is forced to seek an outlet through a gorge or ravine, and by its flow assumes a definite and natural channel by which it escapes at natural season, and such has been